

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

RANDALL LEE and OKEY GRIMM,
On Behalf of Themselves and All Others
Similarly Situated,

Plaintiffs,

v.

13-CV-01219-KG-SCY

DISH NETWORK, L.L.C. and
STOCKTON TELECOMMUNICATIONS, INC.

Defendants.

ORDER

THIS MATTER comes before the Court upon pretrial matters and the following motions: Plaintiffs' Objections to Defendant Stockton Telecommunications, Inc.'s Response to Plaintiffs' Motion for Partial Summary Judgment and Motion to Strike (Doc. 97); Plaintiffs' Motion for Leave to File Their Reply to Defendant Stockton Telecommunications, Inc.'s Response to Plaintiffs' Motion for Partial Summary Judgment (Doc. 100); and Plaintiffs' Motion for Adverse Inference/Spoliation Instruction (Doc. 71). On May 5, 2015, the Court held a motions hearing. Don Foty, counsel for Plaintiffs, and Mark Weitz and Paul Jones, counsel for Defendant, were present at the hearing. John Neuman, counsel for Plaintiffs, attended telephonically. For the reasons stated on the record at the May 5, 2015, hearing, and for the reasons stated herein, the Court hereby rules as follows:

1. the Court overrules, in part, and sustains, in part, Plaintiffs' Objections to Defendant Stockton Telecommunications, Inc.'s Response to Plaintiffs' Motion for Partial Summary Judgment and Motion to Strike (Doc. 97), filed April 30, 2015. Specifically, the Court overrules Plaintiffs' objection that Defendant failed to comply with D.N.M.LR-Civ. 56.1(b).

The Court sustains Plaintiffs' objection with respect to Ira Kusnetz's declaration; paragraphs three, four, and five are stricken. Further, the Court sustains Plaintiffs' objection as to Defendant's factual contentions that are not supported by a proper citation to the record as prescribed in D.N.M.LR-Civ. 56.1(b);

2. the Court grants Plaintiffs' Motion for Leave to File Their Reply to Defendant Stockton Telecommunications, Inc.'s Response to Plaintiffs' Motion for Partial Summary Judgment (Doc. 100), filed May 1, 2015;

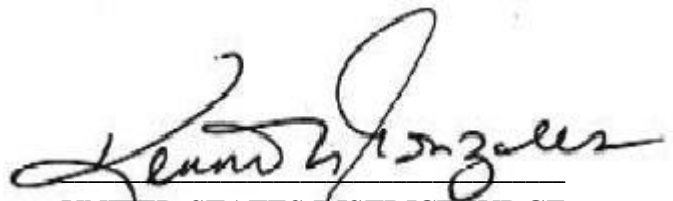
3. the Court grants, in part, and holds in abeyance, in part, Plaintiffs' Motion for Adverse Inference/Spoliation Instruction (Motion) (Doc. 71), filed February 16, 2015.

Plaintiffs may elicit testimony as to whether Defendant failed to implement a litigation hold to preserve Plaintiffs' personnel records. The Court will reconsider this motion if the evidence produced at trial establishes a necessity for a spoliation instruction.

4. the Court overrules Defendant's objection to the untimely consent of class members Abelardo Lopez and John Hendren; and

5. Defendant has until close of business on May 8, 2015, to file a motion for continuance with the requisite medical documentation.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE